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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,327	04/16/2004	Gary L. Cummings	042984-0365487	7904

27500 7590 04/14/2010  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
ATTENTION: DOCKETING DEPARTMENT  
P.O BOX 10500  
McLean, VA 22102

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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04/14/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/825,327

**Applicant(s)**

CUMMINGS ET AL.

**Examiner**

NEIL LEVY

**Art Unit**

1615

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 69-71-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 69-76, 79-82 is/are allowed.
- 6) ☒ Claim(s) 77, 78, 83, 86 and 87 is/are rejected.
- 7) ☒ Claim(s) 84 and 85 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 77,78 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 77 repeats 76; cancel it to overcome this rejection. Then, Claim 78 depends on Claim 76.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 83,86,87 are rejected under 35 U.S.C. 103(a) as being unpatentable over MISSELBROOK et al US005160530A in view LOSEL et al 5707638 and further in view of JUCH et al US005292461A and CHAN et al US005100667A

MISSELBROOK makes Pellets of 5-75% active, inclusive of acephate(col. 6, lines 15 -21) with PVP , polyvinyl alcohol & or other polymeric processing aids (col.

6,lines 32-48) at up to 10%.The pellets are dried, thus substantially free of water(examples). MISSELBROOK dries pellets at 180C (Examples 1-13) pf free-flowing acephate (Examples 1-3, IX). The water content would thus be approaching ) (up to 0.3%). The actives are 50-90% of the microcapsules, the instant pellets (col 6, lines 28-31) and additives can be added, but are not required (col 6, lines 49-52). The instant claim is to "up to" 3.0%, thus inclusive of 0%, and is met by MISSELBROOK, since drying at 180C would leave only traces of moisture, if any, and would be less than the instant processing at 110F.

CHAN (EXAMPLE) also makes Pellets of 95% active, & of the instant density(summary), inclusive of acephate with other polymeric processing aids (col. 4, lines 32-41). Although the now claimed copolymer is not expressed by Misselbrook, film forming polymers are inclusive of the PVA & PVP DERIVATIVES & POLYacrylates. These are seen to be equivalent as shown by LOSEL@ the top of col. 9. LUVISKOL k & AGRIMER, the instant polymers, are shown, and with preparations inclusive of acephates (col. 3, lines 22).

JUCH (col. 7, lines 50- 55) also makes pellets , and shows the equivalence of the processing aids of MISSELBROOK and LOSEL .

One of ordinary skill in the art would have found it obvious, at the time of the instant invention, to utilize equivalent film forming polymers in the preparation of acephate compositions, and be able to prepare the high density, free flowing, pellets, substantially free of water & solvents as shown by CHAN & MISSELBROOK .

***Response to Arguments***

Applicant's arguments filed 3/29/2010 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 69-87 have been considered but are moot in view of the new ground(s) of rejection.

The rejection over claims 69,74-76 & 81 and over 6337327 of 9/30/09 have been withdrawn.

The prior art shows pellets can be made with minimum moisture, solvents & processing aids, the processing aids of the instant invention or equivalent. The current claimed invention permits of the % of active of the prior art pellets of acephate with <3% polymeric processing aids & up to 0.3% moisture, at the instant density.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

Claims 69-76,79-82 are allowed.

Claims 78,84 & 85 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim77 would be allowable if rewritten, or cancelled, to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615

4/8/2010